



February 5, 1999

Mr. Eric M. Bost
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR99-0359

Dear Mr. Bost:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121729.

The Texas Department of Human Services (the "department") received a request for information pertaining to complaints and investigations of a particular nursing facility administrator. You assert that the complainants' identities are excepted from public disclosure by the informer's privilege under section 552.101 of the Government Code. We assume that you have released the remainder of the requested information to the requestor as you have not asserted any exceptions to public disclosure for the remainder of the requested information. Government Code section 552.101 excepts from disclosure information that is made confidential by law. You have submitted the requested information to this office for review.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. The department received the requestor's written request for information on October 22, 1998. You did not request a decision from this office until November 6, 1998, more than ten business days after the requestor's written request. You acknowledge that the department failed to timely request a decision from this office. Therefore, we conclude that the department failed to meet its ten-day deadline for requesting an opinion from this office.

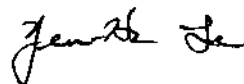
When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body

must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). The applicability of section 242.127 of the Health and Safety Code is such a compelling reason.

Chapter 242 of the Health and Safety Code governs the licensing and regulation of nursing homes and related institutions. It appears from your arguments that the subject of the investigation at issue falls within the scope of chapter 242. Section 242.127 provides that "[a] report, record, or working paper used or developed in an investigation made under this subchapter and the name of any person making a report under this subchapter are confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency." The submitted documents concern the department's investigation of a report of abuse or neglect of nursing home residents; therefore, the documents are confidential under section 242.127 and may be disclosed only for purposes consistent with the rules adopted by the designated agency.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 121729

Enclosures: Submitted documents

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(w/o enclosures)